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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,899	07/02/2001	Kenneth E. Hoffman	1841-1-7	3608
996 7590 04/17/2007 GRAYBEAL, JACKSON, HALEY LLP 155 - 108TH AVENUE NE SUITE 350 BELLEVUE, WA 98004-5901			EXAMINER POINVIL, FRANTZY	
			ART UNIT 3692	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/898,899

Applicant(s)

HOFFMAN ET AL.

Examiner

Frantzy Poinvil

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 1/30/2007 have been fully considered but they are not persuasive.
2. Applicant's representative argues that the system of Fisher et al is not a real-time system simply because Fisher et al mention that "Because most bidders will not, in general, be accessing the network and viewing the merchandise catalog pages as they are updated with new high bids, the system may send electronic mail notifications to bidders who have been outbid by the just-placed bid." Column 6, lines 46-50. From the recitation of Fisher et al, Fisher et al do update their system in real-time as bids are received. The issue being addressed here is the fact that most bidders do not stay in front of their computers or do not constantly monitor the auction system. As such, the system of Fisher et al., in an effort to please or assist those bidders who do not constantly check the status of a given auction, an email notification is sent to them and therefore providing them with an up-to-date status of a given auction. This electronic mail notification is sent to bidders who wish not to constantly monitor the auction system and thus would therefore know the current state of a given auction.

Applicant's representative has amended claims 1 and 2 to recite that certain functions are being provided in real-time and asserted that the system of Fisher et al is not a real-time system.

In response, the Examiner disagrees with the applicant's assertion because the system of Fisher et al is a real-time system in which users access the Internet to submit bids on a desired item. Bids are updated in real-time as they are received. Fisher et al particularly state:

"The present invention provides an electronic auction method and system for presenting merchandise for sale at auction to customers over an electronic network, such as the Internet's World Wide Web. Potential customers are presented with a series of descriptive merchandise catalog pages through which they may navigate to find items (lots) of interest. Upon finding a lot of interest, customers may click a button on screen to display a form for placing a bid on the lot. After submitting this bid, the electronic auction system records the bid and updates the lot's merchandise catalog page to show the current high bid or bids and to whom such bids are attributable. When the auction is closed, after a period of no bidding activity, at a predetermined time, or when a desired sales volume is reached, the electronic auction system notifies the winning and losing bidders by electronic mail and posts a list of the winning bidders on the closed lot's merchandise catalog page." See column 6, lines 13-30 of Fisher et al.

Fisher et al further state that:

"The system receives the electronic bid information and places it in the bid database. because this new bid will, in general, be a bid for a higher amount than was last bid by another party, the system will regenerate the item's catalog page. This updated catalog page will then show the new high bid to any prospective bidders who later access that catalog page. ". Applicant is also being referred to figure 2 illustrating the current status of an auction for a given item.

Thus, applicant's arguments are not persuasive.

The prior Office action is repeated below.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Fisher et al (5,835,896).

As per claims 1-3 and 8-9, Fisher et al disclose a system and method for implementing an auction. The system and method comprise a plurality of user computers connected to an auction system and further comprise:

Identifying a first auction lot subject to bidding;

Providing electronic data to the first group comprising information relating to the first auction lot and an initial bid;

receiving bid information from at least one bidder of the first group concerning the first auction lot;

providing electronic data to the first group comprising information relating to the received bid information concerning the first auction lot;

repeating c) and d) until no further bid information is received from any bidder concerning the first auction lot when no bid higher than the last received bid is received

Art Unit: 3692

within a pre-established period of time, thus concluding bid receiving; and  
providing electronic data to the first group comprising information relating to the last received bid information.

The system of Fisher et al further teaches wherein the virtual environment further comprises a second group having at least one bidder, the method comprising:

- identifying a second auction lot subject to bidding after b) but prior to 9.,
- h) providing electronic data to the second group comprising information relating to the second auction lot and an initial bid after b) but prior to f);
- i) receiving bid information from at least one bidder of the second group concerning the second auction lot;
- j) providing electronic data to the second group comprising information relating to the received bid information concerning the second auction lot;
- k) repeating i) and j) until no further bid information is received from any bidder concerning the second auction lot when no bid higher than the last received bid is received within a pre-established period of time, thus concluding bid receiving; and

Applicant is directed to columns 6-10.

Thus, Fisher et al teach a user may bid on one more types sets or subset of items or objects or first or second group. Data descriptions are provided to the user. A set time of the auction is established and the item is provided to the winning bidders.

As per claims 4-7, Fisher et al teach at least one proxy bid administered by the central computer to establish a virtual bidder, and wherein the proxy bid has a value and

Art Unit: 3692

a fraction of the value is communicated to the first group after a first bid is received from the first group but before the conclusion of bid receiving. Applicant is directed to column 12, line 63 to column 13, line 24. The first auction lot of Fisher et al is also subject to a static auction.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (571) 272-6797. The examiner can normally be reached on Monday-Thursday from 7:30AM to 5:00PM.

Art Unit: 3692

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Frantzy Poinvil**  
**Primary Examiner**  
**Art Unit 3692**

FP  
April 6, 2007